

SENATE BILL 900

By Stevens

AN ACT to amend Tennessee Code Annotated, Title 56
and Title 67, relative to tax relief for new markets
tax credit recipients.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 4, is amended by adding
the following as a new part:

56-4-501. Short title.

This part is known and may be cited as the "New Markets Development Act."

56-4-502. Definitions.

As used in this part:

(1) "Applicable percentage" means zero percent (0%) for each of the first
two (2) credit allowance dates and ten percent (10%) for the next five (5) credit
allowance dates;

(2) "CDFI fund" means the community development financial institutions
fund of the United States department of treasury;

(3) "Credit allowance date" means, with respect to any qualified equity
investment:

(A) The date on which the investment is initially made; and

(B) Each of the six (6) anniversary dates of that date thereafter;

(4) "Department" means the department of revenue;

(5) "Federal fund" means an entity that receives a loan or investment
from the cash proceeds of a qualified equity investment from the applicant or
transferee pursuant to § 56-4-505(e) and uses the proceeds of the loan or

investment to make an investment in a federal qualified community development entity;

(6) "Federal match structure" means the structure allowed by § 56-4-507 whereby a qualified community development entity is deemed to designate a qualified equity investment as a qualified equity investment under 26 U.S.C. § 45D;

(7) "Federal qualified community development entity" means a qualified community development that is an affiliate of the applicant awarded qualified equity investment authority under this part or its controlling entity and that issues a qualified equity investment to a federal fund and designates all of such qualified equity investment as an equity investment under 26 U.S.C. § 45D;

(8) "Principal business operations":

(A) Means the place or places where at least sixty percent (60%) of a qualified active low-income community business's employees work or where employees that are paid at least sixty percent (60%) of the business's payroll work; and

(B) Includes the location of business operations of an out-of-state business that has agreed to relocate employees or an in-state business that has agreed to hire employees using the proceeds of a qualified low-income community investment to establish principal business operations in this state if the business satisfies the criteria in subdivision (8)(A) within one hundred eighty (180) days after receiving the qualified low-income community investment, unless the department agrees to a later date;

(9) "Purchase price" means the amount paid to the qualified community development entity for that qualified equity investment;

(10) "Qualified active low-income community business":

(A) Has the same meaning as defined in 26 U.S.C. § 45D and has its principal business operations in this state at the time of the qualified low-income community investment;

(B) Includes a business:

(i) That is controlled by or under common control with another business if the second business does not derive, or project to derive, fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate and is the primary tenant of the real estate leased from the initial business; or

(ii) That, for the duration of a qualified low-income community investment, the qualified community development entity reasonably expects, at the time it makes the qualified low-income community investment, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the qualified low-income community investment; and

(C) Does not include any business that derives, or projects to derive, fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate;

(11) "Qualified community development entity":

(A) Has the same meaning as defined in 26 U.S.C. § 45D; and

(B) Includes an entity that has entered into, or is controlled by another entity that has entered into, an allocation agreement with the CDFI fund with respect to tax credits authorized by 26 U.S.C. § 45D, and

that includes this state within the service area set forth in that allocation agreement;

(12) "Qualified equity investment":

(A) Means any equity investment in a qualified community development entity that:

(i) Is acquired after the effective date of this act at its original issuance solely in exchange for cash;

(ii) Has at least one hundred percent (100%) of the cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses that have their principal business operations in this state, either directly or indirectly through a federal qualified community development entity in accordance with § 56-4-507;

(iii) Is designated by the qualified community development entity as a qualified equity investment under this part and:

(a) Is designated by the qualified community development entity as a qualified equity investment under 26 U.S.C. § 45D; or

(b) The qualified community development entity makes such designation in accordance with § 56-4-507; and

(iv) Is certified by the department as not exceeding the limitation contained in § 56-4-505(d); and

(B) Includes any qualified equity investment that does not meet the criteria in subdivision (12)(A)(i) if the investment was a qualified equity investment in the hands of a prior holder;

(13) "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business; provided, that with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in that business, on a collective basis with all of its affiliates that may be considered for purposes of meeting the criteria in subdivision (12)(A)(ii) is ten million dollars (\$10,000,000), whether made by one (1) or several qualified community development entities;

(14) "State tax liability" means any liability incurred by a person or entity for the following taxes, as applicable:

(A) Taxes due under § 56-4-205;

(B) Taxes due under § 56-4-218; and

(C) Taxes due under any other state law imposing a premium or insurance premium retaliatory tax, including any replacement taxes imposed on insurance companies if any such taxes are eliminated or reduced;

(15) "Tax credit" means a credit against the taxes imposed by §§ 56-4-205 and 56-4-218, and any other state law imposing a premium or insurance premium retaliatory tax, including any replacement taxes imposed on insurance companies if any such taxes are eliminated or reduced; and

(16) "Taxpayer" means any entity subject to insurance premium tax under state law.

56-4-503. Tax credit established.

(a) A person or entity that makes a qualified equity investment earns a vested right to tax credits as follows:

(1) On each credit allowance date of the qualified equity investment, the purchaser of the qualified equity investment, or subsequent holder of the qualified equity investment, is entitled to a tax credit during the taxable year including that credit allowance date;

(2) The tax credit amount is equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the qualified community development entity for the qualified equity investment; and

(3) The amount of the tax credit claimed must not exceed the amount of the state tax liability of the holder, or the person or entity to whom the tax credit is allocated for use pursuant to § 56-4-504, for the tax year for which the tax credit is claimed.

(b) A taxpayer shall not pay any additional retaliatory tax related to utilization of a tax credit.

(c) A tax credit claimed under this part is not refundable or saleable on the open market.

(d) Tax credits earned by or allocated to a partnership, limited liability company, or S corporation may be allocated to the partners, members, or shareholders of that entity for their direct use in accordance with the provisions of any agreement among the partners, members, or shareholders. Such allocation shall not be considered as a sale for any purpose under state law.

(e) Any amount of tax credit that the taxpayer, or a partner, member, or shareholder of a partnership, limited liability company, or S corporation, respectively, is

prohibited from claiming in a taxable year may be carried forward for use in a taxpayer's subsequent taxable years.

56-4-504. Applications.

(a) A qualified community development entity that seeks to have an equity investment designated as a qualified equity investment and eligible for tax credits under this part shall apply to the department on a form provided by the department that includes:

(1) The name, address, tax identification number of the applicant, and evidence of the applicant's certification as a qualified community development entity by the CDFI fund;

(2) A copy of the allocation agreement executed by the applicant, or its controlling entity, and the CDFI fund;

(3) A certificate executed by an executive officer of the applicant attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the CDFI fund;

(4) A description of the proposed amount, structure, and purchaser of the equity investment;

(5) The amount of qualified equity investment authority sought, which may not exceed the applicant or its controlling entity's available qualified equity investment authority under 26 U.S.C. § 45D, and a copy of the screen shot from the CDFI fund's allocation tracking system evidencing such remaining qualified equity investment authority; and

(6) A nonrefundable application fee of five thousand dollars (\$5,000).

This fee must be paid to the department and is required of each application submitted.

(b) The department shall set a date to accept applications that is not less than thirty (30) days, but not more than forty-five (45) days after the CDFI fund announces allocation awards under a notice of funding availability that was published in the federal register in September 2020.

56-4-505. Certification of qualified equity investments.

(a) Within thirty (30) days after receipt of an application, the department shall grant or deny the application in whole or in part. If the department denies any part of the application, it shall inform the applicant of the grounds for the denial. If the applicant provides any additional information required by the department or otherwise completes its application within fifteen (15) days of the notice of denial, the application must be considered completed as of the original date of submission. If the applicant fails to provide the information or complete its application within the fifteen-day period, the application remains denied and must be resubmitted in full with a new submission date.

(b) If the application is deemed complete, the department shall certify the proposed equity investment as a qualified equity investment that is eligible for tax credits under this section, subject to the limitations contained in subsection (d). The department shall provide written notice of the certification to the qualified community development entity. Once the qualified community development entity receives the names of those taxpayers who are allocated tax credits and their respective tax credit amounts, the qualified community development entity shall provide a notice of allocation to the department, and the department shall provide a certification to the qualified community development entity and each taxpayer containing the tax credit amounts and utilization schedule for which such taxpayer is eligible. If the names of the taxpayers who are eligible to utilize the tax credits change due to a transfer of a qualified equity investment

or a change in allocation pursuant to § 56-4-503(d), the qualified community development entity shall notify the department of the change.

(c) The department shall certify applications in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

(d) Once the department has certified qualified equity investments of an amount that would allow a maximum of twenty million dollars (\$20,000,000) of tax credits in any given tax year, exclusive of tax credits carried forward, the department shall not certify any additional qualified equity investments. If a pending request cannot be fully certified, the department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive a partial award of qualified equity investment authority.

(e) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any affiliate or partner of the controlling entity that is also a qualified community development entity, if the applicant provides the information required in the application with respect to the transferee and the applicant notifies the department in the notice required by subsection (g).

(f) Within thirty (30) days after receiving notice of certification, the applicant or transferees pursuant to subsection (e) shall:

(1) Issue qualified equity investments in an amount equal to the total amount of certified qualified equity investment authority;

(2) Receive cash in the amount of the certified qualified equity investment; and

(3) Designate all of such qualified equity investment authority as a qualified equity investment under 26 U.S.C. § 45D, or complete a federal match structure with respect to the proceeds of such qualified equity investment. The applicant or transferees pursuant to subsection (e) are deemed to satisfy this subdivision (f)(3) by utilizing the federal match structure.

(g) The qualified community development entity shall provide the department with evidence of the receipt of the cash investment and either the designation of the qualified equity investment as a qualified equity investment under 26 U.S.C. § 45D or compliance with the federal match structure within thirty-five (35) days after receiving notice of certification. If the qualified community development entity does not receive the cash investment, issue the qualified equity investment within thirty (30) days following receipt of the certification notice, and comply with subdivision (f)(3), the certification lapses. A certification that lapses reverts back to the department and must first be awarded pro rata to applicants that received awards of qualified equity investment authority and complied with subsection (f).

56-4-506. Recapture.

(a) The department shall recapture tax credits allowed under this part and future tax credits must be forfeited if:

(1) Any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this part, including through the federal match structure, is recaptured under 26 U.S.C. § 45D, in which case, the department's recapture must be proportionate to the federal recapture with respect to that qualified equity investment;

(2) The qualified community development entity redeems or makes principal repayment with respect to a qualified equity investment prior to the

seventh anniversary of the issuance of the qualified equity investment, in which case, the department's recapture must be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment; or

(3) The qualified community development entity fails to invest at least one hundred percent (100%) of the cash purchase price of the qualified equity investment in qualified low-income community investments in this state within twelve (12) months of the issuance of the qualified equity investment and maintain such level of investment in qualified low-income community investments in this state until the last credit allowance date for such qualified equity investment.

(b) For purposes of subdivision (a)(3), an investment is considered maintained by a qualified community development entity even if the investment has been sold or repaid; provided, that the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment in this state within twelve (12) months after the receipt of that capital. Periodic loan repayments received by a qualified community development entity from a qualified active low-income community business within a calendar year are considered as maintained in qualified low-income community investments if a qualified community development entity reinvests such amounts in qualified low-income community investments by the end of the following calendar year.

(c) A qualified community development entity is not required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment. The qualified low-income

community investment is considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance.

(d) The department shall provide notice to the qualified community development entity of any proposed recapture of tax credits pursuant to this section. The entity has ninety (90) days to cure any deficiency indicated in the department's original recapture notice and avoid such recapture. If the entity fails or is unable to cure such deficiency with the ninety-day period, the department shall provide the entity and the taxpayer from whom the tax credit is to be recaptured with a final order of recapture. Any tax credit for which a final recapture order has been issued must be recaptured by the department from the taxpayer who claimed the tax credit on a tax return. The qualified equity investment authority related to recaptured tax credits reverts back to the department and must first be awarded pro rata to applicants that have received awards of qualified equity investment authority and complied with this section.

56-4-507. Matching federal designations of qualified equity investments.

(a) Upon receipt of the proceeds from a qualified equity investment in accordance with § 56-4-505(f)(1) and (2), the applicant is deemed in compliance with § 56-4-505(f)(3), if:

(1) The applicant or transferee under § 56-4-505(e) loans or invests all or a portion of the cash proceeds of the qualified equity investment authority to one (1) or more federal funds;

(2) The federal qualified community development entity issues qualified equity investments to a federal fund equal to at least one hundred percent (100%) of the loan or investment proceeds received by the federal fund as set forth in subdivision (a)(1); and

(3) The federal qualified community development entity designates all of such qualified equity investments as a qualified equity investment under 26 U.S.C. § 45D.

(b) The qualified community development entity is deemed in compliance with § 56-4-506(a), if the federal qualified community development entity complies with § 56-4-506(a) with the funds received pursuant to § 56-4-507(a). The federal qualified community development entity has the rights set forth in § 56-4-506(b) and (c).

56-4-508. Examination and rulemaking.

(a) The department may conduct examinations to verify that the tax credits under this part have been received and applied according to the requirements of this part and to verify that no event has occurred that would result in a recapture of tax credits under § 56-4-506.

(b) The department may issue advisory letters to individual qualified community development entities and their investors that are limited to the specific facts outlined in an advisory letter request from a qualified community development entity. Such advisory letters must not be relied upon by any person or entity other than the qualified community development entity that requested the letter and the taxpayers that are entitled to any tax credits generated from investments in such entity.

(c) In rendering advisory letters and making other determinations under this part, to the extent applicable, the department shall seek guidance regarding 26 U.S.C. § 45D, and the rules and regulations issued pursuant to such law.

56-4-509. Annual report.

(a) Each qualified community development entity shall submit a report to the department no later than May 1 each year during the compliance period. The annual report is not due prior to the first anniversary of the initial credit allowance date. The

report must include, but is not limited to, the following information with respect to all qualified low-income community investments made by the qualified community development entity, including:

(1) The date and amount of, and bank statements or wire transfer reports documenting, such qualified low-income community investments;

(2) The name and address of each qualified active low-income community business funded by the qualified community development entity, the number of persons employed by such business at the time of the initial qualified low-income community investment, and a brief description of the business and the financing;

(3) The number of employment positions maintained by each qualified active low-income community business as of the date of report or the end of the preceding calendar year and the average annual salaries of such positions;

(4) The total number of employment positions created and retained as a result of qualified low-income community investments and the average annual salaries of those positions;

(5) A certification by the qualified community development entity's chief executive officer or similar officer that § 56-4-506 is not implicated; and

(6) Any changes with respect to the taxpayers entitled to claim tax credits with respect to qualified equity investments issued by the qualified community development entity since its last report pursuant to this section.

(b) A qualified community development entity is not required to provide the annual report set forth in this section for qualified low-income community investments that have been redeemed or repaid.

SECTION 2. For purposes of promulgating rules and creating forms and applications, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2022.